



DEPARTMENT of the INTERIOR

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ADMINISTRATION ANNOUNCES SPECIAL RULE ON TIMBER HARVEST IN SPOTTED OWL HABITAT ON NON-FEDERAL LANDS

Interior Department seeks injunction against logging company harvest near spotted owl nests

Weyerhaeuser agrees to develop 100,000 acre Habitat Plan

The Clinton Administration today announced the first key step toward regulatory guidelines for easing restrictions on timber harvesting on private and state lands in Washington, Oregon and Northern California that are in the range of the northern spotted owl, a threatened species. The proposal would chart a course to provide certainty in timber harvest planning, maximize forest management flexibility on private lands, and target continued full protection of ten key forest habitat areas.

In a separate action, the Justice Department, at the request of the Interior Department, asked a federal judge to issue an injunction to stop a planned timber harvest in prime owl habitat on Washington's Olympic Peninsula.

A Special Rule for non-federal lands will be developed over the coming months by the Fish and Wildlife Service to fulfill a pledge made by President Clinton in July to ease restrictions on timber harvesting, wherever possible, due to improved management of federal lands. The development of such special rules is permitted under Section 4(d) of the Endangered Species Act.

"These steps are consistent with one another, and are in line with this Administration's policy to break the gridlock in the forests of the Pacific Northwest," said Assistant Secretary of the Interior for Fish, Wildlife and Parks George T. Frampton, Jr. "We will enforce the laws and regulations that exist. But we are also committed to exercising our flexibility under the Endangered Species Act to achieve reasonable and balanced land use, based on strong science."

"In taking this series of inter-related actions, we're showing that we are enforcing the law when we must, and using its flexibility where we can," Katie McGinty, director of the White House Office of Environmental Policy, said.

"This Special Rule, if adopted, would enable companies and landowners to plan ahead," said Frampton. "This rule is really a road map that will give landowners in the region a greater sense of certainty and predictability."

As the first administrative step in the rulemaking process, the Fish and Wildlife Service will issue a "scoping notice" in the Federal Register to launch the environmental impact analysis process required under the National Environmental Policy Act (NEPA). The goal for a final Special Rule is to provide maximum flexibility for private and state landowners in areas which are not deemed necessary for the survival of the spotted owl. The regulation would also identify ten Special Emphasis Areas (SEAs) where a long-term, habitat-based strategy for conservation of the owl requires continued strict protection measures.

Restrictions would be eased by authorizing timber harvests within certain "home range owl circles." The rule would not diminish the size of the scientifically-based circles--but rather would authorize takings of owls to occur incidental to timber harvests within those circles.

"The vast majority of suitable owl habitat that remains in the region is on federal land," Frampton said. "The President's preferred alternative of the options developed by the Forest Ecosystem Management Assessment Team lays out the necessary federal land components of a comprehensive plan for the species across its range."

"This is a new approach under the Endangered Species Act," Frampton said. "This isn't just about protecting 'circles' of owl habitat; it's about preserving key forest corridors across the range of the owl." He cautioned that the Special Rule would not be a panacea for all non-Federal landowners. "We want to encourage landowners to prepare habitat conservation plans (HCPs) to fill-in forest corridors, in exchange for the ability to harvest trees."

The Service received a commitment early this week to work with Charlie Bingham, Executive Vice President of Weyerhaeuser Corporation, to develop a HCP to cover 100,000 acres of the company's lands in Southwest Washington as a priority effort. (The Department recently announced that Kurt Smitch, director of the Washington State Department of Wildlife, would take leave from his position to head up a major new campaign by the Fish and Wildlife Service on HCPs for private landowners.)

The Administration determined also this week to seek a temporary restraining order and permanent injunction to stop plans to clearcut harvest a 71-acre tract on Washington's Olympic Peninsula. The landowner, Anderson and Middleton Logging Co. of Hoquium, Wash., agreed not to challenge the request for a temporary restraining order so the two sides could prepare for a later court hearing on a preliminary injunction.

The company's attorney sent a letter to the U.S. Attorney's Office in Seattle on November 24, saying the company intended to harvest the land unless the federal government sought civil injunctive relief. Based on arguments made by key Fish and Wildlife Service officials and prominent spotted owl biologists, the Department requested that the Justice Department seek an injunction.

The land, a private inholding on the Quinault Reservation, is inside a large "home range circle" of a mating pair of spotted owls and a juvenile. Fish and Wildlife Service Regional Director Marv Plenert determined that harvesting the 71-acre tract would result in harm to the owls.

Scientists consider the Anderson and Middleton land to be classic Northern spotted owl habitat comprised of late-successional old growth forest, with large diameter trees of up to 1,000 years of age, numerous snags of various classes of decay, a large volume of downed wood debris and a multi-layered canopy. It has never been entered for timber harvest.

Under the terms of a directive to the director of the Fish and Wildlife Service, issued in August 1992, by former Assistant Interior Secretary Michael Hayden, the Service was to exercise "prosecutorial discretion" and not focus enforcement actions on timber harvests that stayed outside a 500-acre circle around a nesting site. In conjunction with the court enforcement action, the Department rescinded that directive on Wednesday.

"We can't base enforcement actions under law on some unscientific, arbitrary figure of 500 acres, applied across the range without regard to the strategic biological importance of a given pair of owls," said Frampton. "We will enforce the laws and regulations that exist in good faith. Encouraging and condoning violations of the law is not the approach of this Administration. If we conclude that the effects of a specific regulation are unwarranted, we will follow correct legal procedure to change the regulations."

The Special Rule the Department plans to develop would relieve or reduce prohibitions against "incidental take" on specific nonfederal lands in the region. An incidental take is defined by law as the killing, harming or harassing of an endangered or threatened species. Inside many current home range

owl circles, incidental take would be permitted outside core areas of 70 acres surrounding a nesting activity center.

Preliminary goals of the Special Rule include acknowledging the state of California's "comprehensive efforts to protect northern spotted owls," and proposing to eliminate duplicative federal prohibitions there. The preliminary plan is that the rule would "retain a high level of protection against the incidental take of northern spotted owls located on non-federal lands in 10 Special Emphasis Areas (SEAs). These areas were chosen to fill in gaps in the federal land plan.

The federal land plan is outlined as the preferred alternative in the Draft Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl. Within the Special Emphasis Areas, the preliminary plan would be "timber harvests generally would not be prohibited if they retain about 40 percent of a home range area of a northern spotted owl as suitable nesting, roosting and foraging habitat and did not otherwise result in the death or injury of an owl." Once suitable land and habitat drops below 40 percent, there would be significantly increased risk of prosecution if harm results to an owl.

The Fish and Wildlife Service also is seeking to look at the effects of a rule on other listed, proposed and candidate species, and at the economic and social affects of the Special Rule in the region.

The Notice of Scoping will be published in the Federal Register. It is a request for public comment on the range of issues to be addressed in a draft environmental impact statement that will be written to support the Special Section 4(d) Rule. The public comment period on the Notice of Scoping will last for 30 days from the date of publication in the Federal Register.

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